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No. 84-1779

In the Supreme Court of the United States

OCTOBER TERM, 1984

COMMONWEALTH OF PENNSYLVANIA, ET AL., PETITIONERS

v.

DELAWARE VALLEY CITIZENS' COUNCIL FOR CLEAN AIR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the Commonwealth of Pennsylvania was precluded by the doctrine of res judicata from relying on a state court judgment "invalidating" a federal court consent decree entered into by the State to challenge the earlier federal court judgment ratifying the consent decree.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 7a-25a) is reported at 755 F.2d 38. The orders of the district court (Pet. App. 1a-2a, 3a-6a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on February 11, 1985. The petition for a writ of certiorari was filed on May 3, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Clean Air Amendments of 1970, 42 U.S.C. (1976 ed.) 1857 *et seq.*, required each state to submit to the Environmental Protection Agency a state implementation plan

for reducing air pollution to meet certain national standards. 42 U.S.C. (1976 ed.) 1857c-5.[1] Petitioner Commonwealth of Pennsylvania submitted a plan that included, among other things, an inspection and maintenance (I/M) program for automobile emission systems. EPA modified and promulgated the plan; it specified that the I/M program was to be implemented by May 1, 1975. The I/M program required motor vehicles to be inspected annually to determine if their exhaust emitted excessive amounts of pollutants. If they did, the owners would be required to have the necessary repairs made. The Commonwealth sought review of certain aspects of the plan as promulgated, but it did not challenge either the requirement that it implement an I/M program or the deadline for implementing that program. See *Pennsylvania* v. *EPA*, 500 F.2d 246 (3d Cir. 1974).

The Commonwealth never implemented the I/M program. In 1976, respondent Delaware Valley Citizens' Council for Clean Air (Delaware Valley) sued petitioners—the Commonwealth and certain state agencies and officials—in the United States District Court for the Eastern District of Pennsylvania, seeking to require them to implement the I/M program. In 1977, the United States also sued petitioners, seeking similar relief. Pet. App. 11a. On August 29, 1978, petitioners entered into a consent decree with Delaware Valley and the United States, agreeing to implement an I/M program for certain areas by August 1, 1980. The consent decree was embodied in an order of the district court (*id.* at 60a-80a).

In March 1980, the parties and the district court agreed to extend the deadline for implementing the program to May 1, 1981 (Pet. App. 86a). The Commonwealth failed to meet

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[1]The Clean Air Act was amended and recodified in 1977. See Clean Air Act Amendments of 1977, 42 U.S.C. 7401 *et seq.* The provision governing state implementation plans now appears at 42 U.S.C. 7410.

that deadline. In February 1981, petitioners still had not issued regulations specifying the equipment needed in the I/M program, and they sought a further extension of the deadline to January 1, 1983. In June 1981, the district court, after learning from EPA that air quality in the areas covered by the decree still did not meet the specified national standard, refused to extend the deadline further. The court declared petitioners to be in violation of the consent decree and ordered them to submit a plan for the immediate implementation of the I/M program. The court modified that plan and ordered that it be implemented by May 1, 1982. On petitioners' appeal, the court of appeals unanimously affirmed. *Delaware Valley Citizens' Council for Clean Air* v. *Pennsylvania*, 674 F.2d 976 (3d Cir.), cert. denied, 459 U.S. 905 (1982).

2. Following the district court's decision of June 1981, the Pennsylvania legislature enacted a statute, H.B. 456, over the governor's veto, prohibiting the expenditure of any funds on the I/M program. Delaware Valley then moved to have petitioners declared in contempt.

In a lengthy opinion, the district court declined to consider H.B. 456 to be a changed circumstance that warranted modification of its order. The court noted that "the Commonwealth of Pennsylvania with a full range of technical and professional guidance and representation at its disposal entered, after considerable opportunity for deliberation and negotiation, into a consent decree in which it agreed to implement an I/M program * * *." *Delaware Valley Citizens' Council for Clean Air* v. *Pennsylvania*, 533 F. Supp. 869, 880 (E.D. Pa.), aff'd, 678 F.2d 470 (3d Cir.), cert. denied, 459 U.S. 969 (1982). The court further stated (533 F. Supp. at 880): "In this case, there is no doubt that [petitioners] are no longer complying with the consent decree. [Petitioners] themselves admitted, that with the passage of H.B. 456, they had discontinued all efforts to implement an I/M

program * * *." The district court accordingly declared the Commonwealth to be in civil contempt and imposed sanctions. The court enjoined the Secretary of the United States Department of Transportation from approving any projects or awarding any grants for highways in the areas covered by the consent decree other than for the purposes of safety, mass transit, or projects related to the improvement of air quality. 533 F. Supp. at 883-884. On petitioners' appeal, the court of appeals again unanimously affirmed, and this Court again denied certiorari. *Delaware Valley Citizens' Council for Clean Air* v. *Pennsylvania*, 678 F.2d 470 (3d Cir.), cert. denied, 459 U.S. 969 (1982).

3. Shortly after the enactment of H.B. 456, two groups of state legislators filed actions in the Commonwealth Court of Pennsylvania, challenging the validity of the consent decree. *Burd* v. *Commonwealth*, 443 A.2d 1197 (1982), rev'd *sub nom. Scanlon* v. *Commonwealth*, 502 Pa. 577, 467 A.2d 1108 (1983).[2] Characterizing the action brought by the state legislators as "a classic confrontation between the federal and state judicial systems" (443 A.2d at 1198), the state court recognized both the validity of the federal decree and the Commonwealth's statutory authority, H.B. 456 notwithstanding, to implement the decree. Nevertheless, the court also acknowledged that, because of H.B. 456, the Commonwealth lacked the financial means to exercise its statutory authority. The court declined to grant the legislators' motion to enjoin petitioners from implementing the I/M program.

On appeal, the Supreme Court of Pennsylvania reversed and remanded. *Scanlon* v. *Commonwealth*, 502 Pa. 577, 467 A.2d 1108 (1983) (Pet. App. 26a-55a). Holding that the

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[2]These same legislators had sought unsuccessfully to intervene in the federal proceedings. *Delaware Valley Citizens' Council for Clean Air* v. *Pennsylvania*, 674 F.2d 970 (3d Cir.), cert. denied, 458 U.S. 1125 (1982).

Commonwealth was not bound by the federal decree because, first, the decree "was signed only by the Pennsylvania Department of Transportation and the Pennsylvania Department of Environmental Resources" (*id.* at 29a n.5), and, second, because relevant state motor vehicle statutes provided no authority for the Pennsylvania Department of Transportation to enter into the consent decree,[3] the state supreme court declared the federal decree "a nullity" (*id.* at 42a). Two justices of the state supreme court dissented (*id.* at 43a-55a).

On remand, the Commonwealth Court ordered the Commonwealth to cease all activities required to comply with the federal consent decree (Pet. App. 57a-59a).

4. The Commonwealth then moved in federal court to vacate the consent decree. The motion was denied by the district court (Pet. App. 1a-2a), and the court of appeals unanimously affirmed (*id.* at 7a-25a). Rejecting the notion that the dispute turned on state law, the court of appeals first stated that "what was attacked collaterally in the state court system was a final federal court judgment" (*id.* at 15a). The court of appeals then noted that the state supreme court's conclusion that the Commonwealth could not be bound by the signatures of counsel for the Pennsylvania Departments of Transportation and Environmental Resources contradicted an earlier holding of the Third Circuit that the consent decree bound the entire Commonwealth and its officers, agents, and employees (*id.* at

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[3]The court concluded that legislation enacted by the Commonwealth's legislature in 1983, Act of May 4, 1983, Act No. 3, 75 Pa. Cons. Stat. Ann. § 4706(b) (Purdon Supp. 1985), which permits the establishment of an I/M system only when required to comply with federal law and to avoid the cut-off of federal funds—the situation in this case—did not serve to validate the consent decree retroactively. The court described the 1983 enactment as being "coerced by a Federal Court Order, and delivered as ransom for the rescue of the citizens of Pennsylvania from the considerable financial distress caused by the withholding of million[s] of dollars in taxpayers' funds ticketed for Pennsylvania highways" (Pet. App. 40a-41a (footnote omitted)).

15a-16a). Thus, the court of appeals concluded that "the ostensible relief" provided by the state court ruling "flies in the face of settled law and the doctrine of *res judicata*" (*id.* at 17a). The court summarized its holding as follows (*id.* at 21a (footnote omitted)):

> Therefore, the case devolves to this. Only the federal courts have the power to determine the authority of federal court litigants, bringing suit under federal law, to enter into consent decrees approved by a federal court. The resolution of this dispute does not go to the substantive merits of the controversy, but it goes directly to basic jurisdictional powers of courts of separate sovereignties. Accordingly, although the Pennsylvania Supreme Court's discussion of state statutes and especially its motor vehicle code is impressive and erudite, jurisprudentially speaking, it is irrelevant to the overarching question of the competency of a state court to interfere with a final, federal court judgment bottomed on federal law.

ARGUMENT

The court of appeals correctly concluded that the state court lacked the power to entertain a challenge to a final federal court decree entered pursuant to federal law. The decision does not conflict with any decision of this Court or any other court of appeals. Accordingly, further review by this Court is not warranted.

1. The court of appeals correctly disposed of the issues raised by petitioners when it recognized that "the Commonwealth could have litigated in 1978 in the federal court issues presented before the state court in *Scanlon*" (Pet. App. 20a-21a). Petitioners' failure to do so precludes them, under the doctrine of res judicata, from pursuing this belated attempt to challenge a valid federal court decree. In *Kremer* v. *Chemical Construction Corp.*, 456 U.S. 461, 467

n.6 (1982), this Court noted the importance of the doctrine of res judicata "in fulfilling the purpose for which civil courts ha[ve] been established, the conclusive resolution of disputes within their jurisdiction."

Petitioners do not challenge the court of appeals' conclusion that they could have raised the issues they now seek to litigate in the 1978 federal court proceedings, nor do they offer any excuse for their failure to do so. Instead, petitioners' sole response to this insurmountable barrier is that "[r]es judicata must be raised in the District Court and may not be raised by the parties on appeal" (Pet. 16). This argument does not withstand scrutiny. It does not matter whether res judicata is raised by a party in district court, or in the court of appeals, or not at all, because of the clear authority of a court, sua sponte, to raise the issue. As the court stated in *American Furniture Co.* v. *International Accommodations Supply*, 721 F.2d 478, 482 (5th Cir. 1981):

> In the posture of this case * * *, where all of the relevant facts are contained in the record before us and all are uncontroverted, we may not ignore their legal effect, nor may we decline to consider the application of controlling rules of law to dispositive facts, simply because neither party has seen fit to invite our attention to the issue by technically correct and exact pleadings. We do so *sua sponte*.

See also *W.E. Hedger Transp. Corp.* v. *Ira S. Bushey & Sons, Inc.*, 186 F.2d 236, 237 (2d Cir. 1951). In this case, petitioners "can claim no surprise or prejudice" (*American Furniture Co.*, 721 F.2d at 482) from the fact that the court of appeals treated the preexisting federal decree as res judicata. All parties and the state court were well aware of the

existence of a final judgment.[4] Petitioners, therefore, cannot be heard to complain of injustice simply because the court of appeals articulated the obvious. See *Los Angeles Branch NAACP* v. *Los Angeles Unified School Dist.*, 750 F.2d 731, 745 (9th Cir. 1984) (en banc):

> There is no manifest injustive in denying plaintiffs the opportunity to relitigate a part of a claim when they had a previous opportunity to do so but elected against it.

For this reason alone, the judgment of the court of appeals was correct and should be left undisturbed.

2. The bar of res judicata is not the only obstacle to petitioners' reliance on state law to escape their federal obligations. First, the state supreme court disregarded decisions of this Court as well as its own courts holding that, under the Full Faith and Credit Clause of the Constitution (Art. IV, § 1), state courts are not free to disregard the judgments of federal courts. See, *e.g.*, *Stoll* v. *Gottlieb*, 305 U.S. 165, 170 (1938); *Embry* v. *Palmer*, 107 U.S. 3, 10 (1883); *Bardo* v. *Commonwealth*, 40 Pa. Commw. 585, 587 n.1, 397 A.2d 1305, 1307 n.1 (1979). As this Court stated in *Donovan* v. *City of Dallas*, 377 U.S. 408, 412 (1964) (footnote omitted):

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[4]In *Scanlon*, the Supreme Court of Pennsylvania described the federal actions as follows: "[W]ithout adjudication of any of the issues raised, the actions were concluded by the entry of a consent decree agreed to by counsel for the parties to the lawsuits" (Pet. App. 29a (footnote omitted)). If the state court meant to suggest that such a decree is something less than a judgment of a court issued after the parties have fully litigated their differences, it was in error. See, *e.g.*, *Nevada* v. *United States*, 463 U.S. 110 (1983); *A. D. Juilliard & Co.* v. *Johnson*, 166 F. Supp. 577, 585 (S.D.N.Y. 1957), aff'd, 259 F.2d 837 (2d Cir. 1958), cert. denied, 359 U.S. 942 (1959). "[A] consent judgment 'is as conclusive and final as to any matter determined as one rendered in invitum after contest and trial. And such a judgment cannot be impeached collaterally in another proceeding.' " *Nash County Bd. of Educ.* v. *Biltmore Co.*, 640 F.2d 484, 487 (4th Cir. 1981) (citation omitted).

> Early in the history of our country a general rule was established that state and federal courts would not interfere with or try to restrain each other's proceedings.

It was wholly inappropriate for the state court to interject itself into these federal proceedings and to declare the federal decree "a nullity." Moreover, as the court of appeals noted (Pet. App. 23a n.6), there need be no concern over the prospect of future interference by the state courts. The Anti-Injunction Act, 28 U.S.C. 2283, ensures that petitioners need not be put in the awkward situation of attempting to comply with conflicting court orders.[5]

Second, the federal interest in the subject matter of this litigation is clearly paramount to the concerns of the state supreme court. Because of the clear, congressionally-established mandate to achieve compliance with the ambient air quality standards required under the Clean Air Act, there was no reason in this case for the federal courts to defer to the state supreme court on any inconsistent interpretation of the long-standing consent decree duly entered in federal court. The decision of the state court, issued so late in this protracted dispute, "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941) (footnote omitted). Moreover, Congress clearly contemplated the cooperation of the states with the federal

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[5]The action of the state supreme court in this matter is quite similar to the situation before this Court in *Washington* v. *Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658 (1979). There, the Washington Supreme Court had held that state agencies could not comply with a duly entered federal court injunction. This Court disagreed, holding that "[s]tate-law prohibition against compliance with the District Court's decree cannot survive the command of the Supremacy Clause of the United States Constitution" (443 U.S. at 695). That holding is equally applicable here.

government in implementing the Clean Air Act. See 42 U.S.C. 7401(a)(3) and (4). The decision of the state supreme court fails to take into account the overriding federal interest in ensuring compliance with the requirements of the Clean Air Act as expressed through the Commonwealth's state implementation plan and a valid consent decree signed by the Commonwealth's representatives. As this Court held in *Sola Electric Co.* v. *Jefferson Electric Co.*, 317 U.S. 173, 176 (1942) (citations omitted):

> It is familiar doctrine that the prohibition of a federal statute may not be set at naught, or its benefits denied, by state statutes or state common law rules. * * * [T]he doctrine of [*Erie R.R.* v. *Tompkins*, 304 U.S. 64 (1938)], is inapplicable to those areas of judicial decision within which the policy of the law is so dominated by the sweep of federal statutes that legal regulations which they affect must be deemed governed by federal law having its source in those statutes rather than by local law. When a federal statute condemns an act as unlawful, the extent and nature of the legal consequences of the condemnation, though left by the statute to judicial determination, are nevertheless federal questions, the answers to which are to be derived from the statute and the federal policy which it has adopted. To the federal statute and policy, conflicting state law and policy must yield.

3. Petitioners argue (Pet. 14-15) that the decision of the court of appeals conflicts with the decisions of two other federal courts that have held that federal consent decrees must be vacated when in conflict with state law. But the two cases relied on by petitioners, *Washington* v. *Penwell*, 700 F.2d 570 (9th Cir. 1983), and *West* v. *Bank of Commerce & Trusts*, 167 F.2d 664 (4th Cir. 1948), simply restate the rule that "an attorney at law has no authority, without his client's permission, to compromise his client's claim" (*West*,

167 F.2d at 666). In *Penwell*, the court of appeals noted that "[t]he named defendants in this lawsuit were the state officials, not the state" (700 F.2d at 573 n.3). Thus, the decree in *Penwell* had the effect of binding a non-party, thereby creating "an impermissible constitutional confrontation between the federal court and the state legislature" (700 F.2d at 574). No similar concern is present in the instant case.

Much earlier in this litigation, the court of appeals conclusively held that the Commonwealth was a party to the litigation, that it had been properly represented by the Pennsylvania Department of Justice throughout the litigation, and that it was bound by the federal consent decree. *Delaware Valley Citizens' Council for Clean Air* v. *Pennsylvania*, 678 F.2d 470, 475-476 (3d Cir.), cert. denied, 459 U.S. 969 (1982). Clearly, a federal court can make its own determination as to those parties properly before it. The state supreme court, in rejecting the prior holding of the Third Circuit, was simply wrong on the facts as well as the law. Contrary to the state court's assertion (Pet. App. 29a-30a n.5), the Commonwealth was and always has been a named defendant in this litigation, with authority to bind the entire Commonwealth. Thus, "even if the executive branch defendants were physically or legally incapable of complying with the decree, those Commonwealth officials sitting in the General Assembly certainly are not incapable of insuring the Commonwealth's compliance" (678 F.2d at 475-476 (footnote omitted)). Similarly, as noted in the dissenting opinion of Justice Zappala, "regardless of the intragovernmental processes necessary to comply, the Commonwealth itself, not just the agencies of the executive, but the entire state government, became bound by the consent decree" (Pet. App. 48a). There is therefore no warrant to disturb the lower courts' refusal to vacate the consent decree.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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